

SUMMARY OF PUBLIC ACCESS PROPOSALS
RE: PUBLIC ACCESS TO ENCINAL/LECHUZA BEACH

The following summarizes the two public proposals which have been presented to the California Coastal Commission relative to the mechanism for providing public access to Encinal/Lechuza Beach.

SUMMARY OF DIRECTOR PUBLIC ACCESS PROPOSAL
OF THE MALIBU ENCINAL HOMEOWNERS ASSOCIATION

The Directors of the Malibu Encinal Homeowners Association (MEHOA) provided Coastal Commissioners with a one page proposal on June 12, 1991 which implied that the public now has access to the heretofore private streets and beaches of this prestigious beachfront community; the letter is attached. Although this public access offer appears to have been made out of pure philanthropic motives, one is tempted to believe that another motive is involved; more specifically, if MEHOA were to grant public access to the beach then maybe the Coastal Commission would not be motivated to approve the Lechuza Villas West, L.P. project. It is noted that the letter proposing access was delivered to the Commissioners the day the Lechuza Villas West, L.P. project was scheduled to be heard by the Coastal Commission.

Regardless of the motivation behind MEHOA's letter it is clear from the following reasons that the proposal was not legal, did not provide a practical and comprehensive plan for access, and could have been withdrawn at any time:

1. The Homeowners Association does not have the legal authority to grant public access over private property which they do not own. More specifically, each member of the Homeowners Association was granted an easement for ingress and egress and utilities over Sea Level Drive to their individual lot; they did not obtain any ownership of the underlying property nor did they gain the right to grant the easement to anyone else except the successor in interest to the ownership of the lot which they purchased.
2. The Directors voted to open the gates to pedestrian traffic without asking for the vote of the majority of the individual Homeowner members; this is illegal.

The Directors do not have the authority to open the gates; only the majority of the Homeowner members have that kind of authority.

3. Even if the Homeowners Association did own the streets and beaches and the majority of the Homeowners were to vote positively to open the gates to the public in the near future there is no guarantee that the public will maintain access to the beach during any prolonged period after the vote; if the Homeowners Association can grant permission to the public for access then the Homeowners Association can easily vote a month later, or at any

time, to withdraw that permission. The Homeowners Association has no project pending in front of the Coastal Commission and therefore there is no nexus.

4. The fact is that not one member of the Homeowners Association who ~~owns~~ a lot or lots has stated a willingness to grant a vertical public access across their property to the Mean High Tide line. .
5. If we assume again that the public does gain access to the Mean High Tide line over a property which is owned by one of the members of the Homeowners Association and who is willing to grant that easement, what is the nature of the lateral easement along the beach when the public does arrive? The Homeowners Association is not suggesting that the public will have any easement rights over the privately owned property along the beach, but will only have the right for pass and repass seaward of the Mean High Tide line. Because the Wave Uprush normally extends landward past the Mean High Tide line at least 50% of the time the lateral public easement that the Directors of the Homeowners Association would have you believe is adequate is not adequate at all.

SUMMARY OF THE LECHUZA VILLAS WEST
PROJECT PUBLIC ACCESS PROPOSAL

Lechuza Villas West, L.P. and other lot owners desiring to build single family homes on a portion of their lots have proposed public access conditions which, unlike the Homeowners Association's, can result in real public access to more than 50% of all of the beach property. These access provisions are comprehensive and are summarized below:

1. The public access provision which is part of the Lechuza Villas West project is real and can be enforced. Lechuza Villas West is able to grant fee title to a ten (10) foot strip of property extending from Broad Beach Road, a public street, seaward to Sea Level Drive, and to grant an easement over property which Lechuza Villas West owns across Sea Level Drive and across Lot 140 to the Mean High Tide line.
2. The Project also provides a lateral public access easement of 65+ feet wide across the entire 1,036 feet of coastline property owned by Lechuza Villas West or individual lot owners who will benefit from the ability to build on their lots.
3. Additionally, Lechuza Villas West will provide a \$25,000.00 fund to improve the existing stairway on the vertical access to standards which would permit intense public access safely.

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4. In addition to the above stated vertical and lateral public access provisions the partners of Lechuza Villas West have arranged to purchase in excess of 450 lineal feet of the Escondido Creek habitat and to transfer that ownership to a State agency in fee. Not only will this Escondido Creek grant guarantee that a substantial amount of the Monarch Butterfly wintering grounds habitat will be protected forever but it can also provide the majority link for a second vertical access from Pacific Coast Highway to the Mean High Tide line. Although there is an additional parcel of property between the above referenced Creek lot grant and the Mean High Tide line this parcel has been deed restricted against any development and the owner is required to maintain it as a Monarch Butterfly habitat and therefore a ten (10) foot wide access easement would be very inexpensive for the State to acquire either through negotiations with the owner or through condemnation procedures. The partners of the Lechuza Villas West project are willing to provide an additional \$25,000.00 to the State for the purpose of acquiring this remaining ten (10) feet for a public access link so that there would be two (2) vertical access ways provided to the public; one on the east end of the lateral access easement and one on the west end.
5. And finally, the Lechuza Villas West project is offering the State of California nine (9) of the 18 lots involved in the Lechuza Villas West project. The lots would be sold for 75% of their appraised value. These nine (9) lots represent 520 feet of coastline property as well as the majority of the land involved in the Lechuza Villas West project properties.

IN CONCLUSION:

Although the letter to the Coastal Commission by the Directors of the Homeowners Association does not outline a mechanism by which the public can obtain a real access easement to the Mean High Tide line it does provide an additional assurance that the Lechuza Villas West access provisions will not be interfered with by the Homeowners Association. And to that extent, the Lechuza Villas West partners will be very happy to work with the Homeowners and the Coastal Conservancy to insure that the public beach access provisions associated with the Lechuza Villas West project proposal are enacted quickly so the public can enjoy this beautiful beach during the upcoming summer.